ASIA PR MEDIA SDN BHD

v.

PP

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL WAHAB PATAIL J
[CRIMINAL APPLICATION NO: 44-8-98]
25 MARCH 1999

CRIMINAL PROCEDURE: *Revision - Revisionary powers of High Court - Nature, scope and extent of power - Magistrate referring proceeding to High Court before a finding, sentence or order - Whether reference improper - Courts of Judicature Act 1964, s. 31 - Criminal Procedure Code, Chapter XXXI*

The Employment Provident Fund ('EPF') had laid a complaint against Asia PR Sdn Bhd for failure to pay contributions of its employees. At the trial, an application for revision was made under s. 31 Courts of Judicature Act 1964 pertaining to the questions of (i) whether the EPF as a corporate body is empowered to institute criminal proceedings (ii) whether the prosecuting officer from the EPF has *locus standi* to prosecute. The magistrate decided to allow the application and remitted the case to the High Court for revision.

Held:

[1] Section 31 is clearly not the basis for an application to refer a case being heard by a magistrate to the High Court. That section merely empowers the High Court with revisionary powers in respect of criminal proceedings in the inferior court.

[2] Revision of criminal proceedings is dealt with in Chapter XXXI of the Criminal Procedure Code. These procedures for revision, however, do not include the reference of questions of law by an inferior court in on-going proceedings to the High Court. The application herein was therefore wrong and the magistrate had erred in referring the matter to the High Court.

[3] Even if this case is treated as a matter that "otherwise comes to his knowledge", the powers the judge may exercise under s. 325 of the Code are limited to the powers under ss. 311, 315, 316 and 317 therein. These powers however relate to situations where the inferior court has made a finding, sentence or order. Referring a proceeding to the High Court as was done in this case, before a finding, sentence or order, is clearly improper as it amounts to seeking legal advice from the High court.

[4] The magistrate, hearing arguments in the nature heard in this case, must make a decision. If informed that similar questions are the subject of an appeal to the appellate courts, the magistrate is entitled to reserve further argument and decision until the appellate court has made a decision, but the magistrate is not obliged to do so.

[Application dismissed.]

Legislation referred to:
Courts of Judicature Act 1964, s. 31
Criminal Procedure Code, ss. 135, 311, 315, 316, 317, 323, 324, 325, 327, Chapter XXXI
Employees Provident Fund Act 1991, s. 43(2)
Employees Provident Fund Rules 1991, r. 3

For the appellant - Bernard Gomes; M/s Lin & Co
For the respondent - Stanley Clement Augustin DPP

Reported by Sherin Kunhibava

JUDGMENT

Abdul Wahab Patail J:

The Employees Provident Fund, through its officer Muzam b. Zaini, had laid a complaint against Asia PR Sdn Bhd for failure to pay over contributions of its employees Poh Say Eong and Lai Min Seng before 21 March 1996 and 21 April 1996 as required by r. 3 of the Rules of the Employees Provident Fund 1991, an offence punishable under s. 43(2) of the Employees Provident Fund Act 1991.

At the trial an application was made under s. 31 of the Courts of Judicature Act 1964 for revision, upon the grounds:

a. Whether the EPF as a corporate body is empowered to institute criminal proceedings.

b. Whether the prosecuting officer from the EPF has *locus standi* to prosecute.

Argument was heard in the Magistrate's Court and it was decided by the magistrate:

> Setelah mendengar dan meneliti hujah-hujah pihak pembelaan dan pihak pendakwaan didalam bantahan awal, mahkamah dengan ini membenarkan permohonan peguambela dibawah seksyen 31(1) Akta Mahkamah Keadilan

1964 untuk menghantar rekod kes ini ke Mahkamah Tinggi memandangkan persoalan-persoalan yang telah ditimbulkan didalam bantahan awal berkenaan melibatkan peruntukan Perkara 145(3) Perlembagaan Persekutuan. Oleh yang demikian, kes ini akan ditangguhkan sehingga keputusan berkenaan perkara ini dibuat oleh Mahkamah Tinggi.

Section 31 of the Courts of Judicature Act 1964 provides for revision of criminal proceedings of the subordinate courts:

The High Court may exercise powers of revision in respect of criminal proceedings and matters in subordinate courts in accordance with any law for the time being in force relating to criminal proceedings.

Section 31 is clearly not the basis for an application to refer a case being heard by a magistrate, to the High Court. It merely empowers the High Court with revisionary powers in respect of criminal proceedings in the inferior court. The application was wrong and the magistrate had erred in referring the matter to the High Court.

Revision of criminal proceedings is dealt with in Chapter XXX1 of the Criminal Procedure Code. The procedures for revision do not include the reference of questions of law by an inferior court in on-going proceedings to the High Court. Section 323 provides that a judge may call for and examine the record of any proceeding of an inferior court for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order passed or as to the regularity of any proceedings of such inferior court. The judge has power to order further inquiry into complaints dismissed under s. 135 or where the accused has been discharged (s. 324).

The magistrate, hearing arguments in the nature heard in this case, must make a decision. If informed that similar questions are the subject of an appeal to the appellate courts, the magistrate is entitled to reserve further argument and decision until the appellate court has made a decision, but the magistrate is not obliged to do so. The magistrate may elect to make her own decision, which, may in the usual course be subject of an appeal. But none of these provide a basis for a magistrate to refer such questions to the High Court, essentially for legal advice.

Even if this case is treated as a matter that "otherwise comes to his knowledge", the powers the judge may exercise under s. 325 are limited to the powers under ss. 311, 315, 316 and 317 of the Code. These powers relate to situations where the inferior court had made a finding, sentence or order. The orders on revision are specified in s. 327:

327 Orders on revision

When a case is revised under this Chapter by a Judge he shall certify his decision or order to the Court by which the finding, sentence or order revised was recorded or passed stating, where such finding, sentence or order revised has been varied, the grounds for such variation; and the Court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified and, if necessary, the record shall be amended in accordance therewith.

Again there must first have been a finding, sentence or order by the magistrate. Referring a proceeding to the High Court as was done in this case, before a finding, sentence or order, amounts to seeking legal advice from the High Court. Since any order by the High Court in these circumstances is not in accordance with the Code, it will not be binding. Worse it may appear as an interference with the exercise of the judicial powers and discretion, no matter how humble, of the magistrate.

The advocate for PR Asia Sdn Bhd, in his appearance before this court proceeded directly to the legal questions without formally setting out clearly how this matter is now before the High Court. He spoke of his experience working with the Employees Provident Fund, of actions to investigate, to institute and to conduct proceedings without reference to or sanction of the Public Prosecutor. These statements are made from the Bar. Such matters, if to be seriously considered in evidence, would necessitate the advocate to be a witness, thereby disqualifying himself from appearing as advocate in this case.

The issues in this case are reasonably straight-forward and there are ample authorities capable of being binding upon the Magistrate's Court. But the magistrate must apply its judicial mind and make a decision. A decision to refer to the High Court is a dereliction of that duty, and cannot be encouraged. As I have set out earlier above, since any pronouncement by this court in this case serves little purpose in law, I would dismiss this application and send back the record to the magistrate.